

## PART 9405—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552, as amended.

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### § 9405.1 Purpose and scope.

The regulations in this part implement the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, with respect to the availability of records for inspection and copying.

### § 9405.2 Definitions.

As used in this part, the term—

*Chief FOIA Officer* means the person designated under § 9405.3(d) who has Commission-wide responsibility for the efficient and appropriate compliance with the FOIA.

*Commercial use request* means a FOIA request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Officer will determine, whenever reasonably possible, the use to which a requester will put the requested documents. Where the FOIA Officer has reasonable cause to doubt the use for which the requester claims to have made the FOIA request or where that use is not clear from the FOIA request itself, the FOIA Officer will seek additional clarification before assigning the request to a specific category.

*Commission* means the U.S. Election Assistance Commission, established by

the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

*Commissioner* means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

*Direct costs* means those expenditures which the Commission actually incurs in searching for, duplicating, and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that basic rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses, such as the cost of space and heating or lighting the facility in which the records are stored.

*Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape, DVD, or CD). The Commission will honor a requester's specified preference of form or format of disclosure if the records requested are reasonably reproducible with reasonable efforts in the requested form or format.

*Educational institution* means a pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institute of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

*Executive Director* means the Executive Director of the Commission or his or her designee.

*FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

*FOIA Officer* means a person designated by the Chief FOIA Officer under § 9405.3(d) to carry out day-to-day implementation of the FOIA activities of the Commission.

*FOIA Public Liaison* means a person designated by the Chief FOIA Officer

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under § 9405.3(d) to assist in the resolution of any disputes between the requester and the Commission.

*FOIA request* means to seek the release of records under 5 U.S.C. 552, as amended.

*General Counsel* means the General Counsel of the Commission or his or her designee.

*Non-commercial scientific institution* means an organization that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

*Record* means any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including, but not limited to, an electronic format. Record includes information that is maintained for the Commission by an entity under Government contract for the purposes of records management.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. As used in this paragraph, “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, web logs, and publishers of periodicals (but only in those instances in which these entities can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. As used in this paragraph, a “web log” means a publicly available Web site, usually maintained by an individual, with regular entries of commentary, descriptions of events, or other material. A freelance journalist may be regarded as working for a news media entity and therefore, considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by a news organization (whether or not the jour-

nalist is actually employed by the entity). A publication contract would present a solid basis for such an expectation. The Commission may also consider the past publication record of the requester in making this determination.

*Requester* is any person who submits a FOIA request to the Commission for release of a record under 5 U.S.C. 552, as amended.

*Review* means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, *i.e.*, doing all that is necessary to excise exempt portions of the document or otherwise prepare the document for release. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search* means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records that are responsive to a FOIA request, including, but not limited to, page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Search time does not include review of material to determine whether the material is exempt from disclosure.

#### § 9405.3 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of individuals and other entities with respect to trade secrets and commercial or financial information entitled to privileged and confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.